

**MOSS v. BALLARD**  
**CASE NO. 2:09cv01406**

**RESPONDENT'S EXHIBIT 27**

IN THE CIRCUIT COURT OF KANAWHA COUNTY

WEST VIRGINIA

JOHN MOSS, III,

Petitioner

vs.

Action No. 94-MISC-663

GEORGE TRENT, etc., et als,

Respondents

BEFORE: Hon. Louis H. Bloom

Motion for Writ of Habeas Corpus

June 10, 2001

Connie L. Cooke

Official Reporter

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

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APPEARANCES

FOR THE STATE:

Michele Drummond  
Asst. Prosecuting Attorney  
Kanawha County Judicial Bldg.  
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FOR THE DEFENDANT:

Lonnie R. Simmons  
Attorney at Law  
604 Virginia Street, E.  
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1 BE IT REMEMBERED, that on Monday, the 10th  
2 day of June, 2002, during the May 2002 Term of said  
3 Court, in the matter of JOHN MOSS, III, Petitioner,  
4 versus GEORGE TRENT, etc., et als, Respondents, upon  
5 Action No. 94-MISC-663, as stated in the caption  
6 hereto, upon a habeas corpus proceeding, the following  
7 transpired:

8  
9 THE COURT: This is a habeas matter.  
10 We have Mr. Simmons and Ms. Drummond present.

11 Ms. Drummond, you filed a motion?

12 MS. DRUMMOND: Yes, your Honor. The  
13 motion was very brief. My request is simply to ask the  
14 Court's permission to allow the State to re-open the  
15 matter in this Writ of Habeas Corpus. I have recently  
16 been assigned to it.

17 The matter was handled by two of  
18 the assistants in our office, one who is no longer  
19 there.

20 Upon reflection of the file and  
21 upon meeting with various members of the West Virginia  
22 Department of Public Safety forensics lab, I am  
23 personally of the opinion that evidence which should  
24 have been brought to the Court's attention and made

1 part of the record was not, that there was a failure to  
2 do so.

3 I believe that the equities of  
4 justice would permit the Court to do this, and I think  
5 it is important in this Court coming to the proper  
6 opinion in this matter, and allowing the record to  
7 blossom a little bit. There is a Writ, assuming it is  
8 not granted here, that will be forwarded on to the  
9 Supreme Court. The Supreme has a better reflection of  
10 what the evidence in this matter was.

11 THE COURT: What additional activity  
12 would you seek?

13 MS. DRUMMOND: My intention would be to  
14 call at least two, if not perhaps a third witness.  
15 They are Brett Meyers, of the lab in question --  
16 specifically, I don't think the record was fully  
17 developed, and depositions of Doctor Bing and Trooper  
18 Murphy, I believe it was, as to some of the blood  
19 evidence. It's just a general type of inquiry.

20 THE COURT: And you would do that by  
21 way of further depositions?

22 MS. DRUMMOND: Or calling them into  
23 Court, whatever would be best.

24 THE COURT: Alright. Mr. Simmons ...

1 MR. SIMMONS: Judge, on behalf of the  
2 petitioner, we would object to reopening. This case  
3 has been pending for -- I think it has a '94 number on  
4 it. It's not this Court's fault though, and I don't  
5 mean to imply that at all.

6 My client is anxious to get,  
7 particularly the Fred Zain issue, up to the Supreme  
8 Court. I think the respondent in the case has had  
9 ample opportunity to develop the record.

10 My recollection of what is in the  
11 record, all of the lab notes from the testing in the  
12 record, Mr. -- Trooper Murphy and Trooper Zain were the  
13 ones who performed the testing in the case. Murphy has  
14 been deposed, and Zain has not.

15 We just object. We think that the  
16 respondent has had ample time. There were deadlines  
17 that they could have met. And we don't believe that  
18 the respondent has demonstrated the need to reopen the  
19 case. It has continued this long, and I just believe  
20 that it just further prejudices my client with more  
21 delay.

22 THE COURT: Alright. I am going to  
23 -- this case is one that has been around for some time.  
24 However, after looking at all of the equities as to

1 everybody involved in this matter require that the  
2 evidence be fully developed.

3 Ms. Drummond is apparently new to  
4 the case and sees some deficiencies. I want to give  
5 her the opportunity, and for the Court to be fully  
6 informed of all of the facts upon which a proper and  
7 just decision might be made.

8 Ms. Drummond, do you think you can  
9 have your evidence concluded in the next sixty (60)  
10 days?

11 MS. DRUMMOND: Yes, your Honor.

12 THE COURT: Alright. Thereafter --  
13 have both parties briefed this matter fully?

14 MR. SIMMONS: The petitioner has.

15 MS. DRUMMOND: No, your Honor. The  
16 opinion that was out, that was developed in the record,  
17 I would not be able to brief it from the evidence.

18 THE COURT: Alright. Well, why don't  
19 we conclude all testimony in this matter by way of  
20 deposition within sixty (60) days. I'll then give you  
21 forty-five (45) days thereafter to file your response  
22 memorandum, and then I'll give Mr. Simmons fifteen (15)  
23 days after that.

24 Does that give you enough time?

1 MR. SIMMONS: That would be fine.

2 MS. DRUMMOND: That's fine, your Honor.

3 THE COURT: Alright. And then, you  
4 all could get a date after that, and Sheila will set it  
5 down for hearing.

6 Thank you all very much.

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8 WHEREUPON, the proceedings were concluded.

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1 STATE OF WEST VIRGINIA,  
2 COUNTY OF KANAWHA, to-wit:

3  
4 I, Connie L. Cooke, Official Reporter for the  
5 Circuit Court of Kanawha County, do hereby certify that  
6 the foregoing is a true and correct transcript of the  
7 proceedings had and reported in the above captioned  
8 matter, as reported by me and transcribed into the  
9 English language.

10 Given under my hand this \_\_\_\_\_ day of

11 \_\_\_\_\_, 2002.

12  
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16 \_\_\_\_\_  
17 Official Reporter  
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**MOSS v. BALLARD**  
**CASE NO. 2:09cv01406**

**RESPONDENT'S EXHIBIT 28**

IN THE CIRCUIT COURT OF KANAWHA COUNTY  
WEST VIRGINIA

JOHN MOSS, III,  
Petitioner

vs.

Action No. 94-MISC-663

GEORGE TRENT, etc.,  
Respondent

BEFORE: Hon. Louis H. Bloom

HABEAS CORPUS

January 17, 2003

Connie L. Cooke

Official Reporter

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APPEARANCES

Lonnie Simmons  
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(Counsel for Petitioner)

Mary Beth Kershner  
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Charleston, WV 25301  
(Counsel for Respondent)

1 BE IT REMEMBERED, that on Friday, the 17th  
2 day of January, 2003, during the January 2003 Term of  
3 said Court, in the matter of JOHN MOSS, III, Petitioner  
4 versus GEORGE TRENT, etc., Respondent, upon Action No.  
5 94-MISC-663, as stated in the caption hereto, upon a  
6 Habeas Corpus proceeding, the following transpired:

7  
8 THE COURT: This is the matter of State  
9 versus John Moss. Would counsel please note your  
10 appearance -- or, I guess it's technically Moss versus  
11 Trent.

12 MR. SIMMONS: Lonnie Simmons on behalf of  
13 the Petitioner, John Moss.

14 MS. KERSHNER: Mary Beth Kershner, Assistant  
15 Prosecuting Attorney, for the Respondent.

16 THE COURT: Alright. Mr. Simmons, are you  
17 ready to proceed?

18 MR. SIMMONS: Yes, your Honor.

19 We're here today to resolve the  
20 final issues that are raised in the Habeas petition.  
21 The previous Orders of the Court have already resolved  
22 what I call the *Fred Zain* Habeas, or the laboratory  
23 decision issues, and that has been fully briefed, and I  
24 know the Court has had all of that.

1                   In the meanwhile, Ted Smith was  
2       deposed, and I believe that is of record now. The  
3       arguments are pretty well set out in the briefs.

4                   The second issue is the  
5       Petitioner's proof that the actual testing and  
6       testimony given by Fred Zain was false, misleading, and  
7       unscientific. So what distinguishes the second issue  
8       from the issue -- under the laboratory decision, the  
9       Court had to presume that the testing and testimony of  
10      Fred Zain was false, misleading, and unscientific,  
11      whereas on the second issue, the Petitioner has the  
12      burden of proving that that is the case. And in order  
13      to do that, we retained Doctor David Bing, B-I-n-g, and  
14      he was deposed and his testimony is also of record. So  
15      his testimony was cited both in the previous Orders and  
16      in subsequent briefs.

17                  Doctor Bing was able to confirm  
18      that many of the findings that formed the basis of the  
19      laboratory decisions actually do apply to John Moss'  
20      case. One of the things that is a little bit unusual  
21      about this case that no one seems to have an answer for  
22      is the fact that John Moss's case should have actually  
23      been included in the initial special investigation that  
24      was conducted by Judge Holiday. And for whatever

1       reason, is wasn't. But he fit the pattern; he was  
2       still incarcerated, obviously, and Fred Zain did  
3       testing and testimony in his case. And for whatever  
4       reason, it wasn't. And I think this case would have  
5       been simplified had it been involved in that initial  
6       investigation, because the ASCLAB experts found errors  
7       in every single case they looked at.

8                       But what Doctor Bing noted  
9       initially was that many of the criticisms that were  
10      made through the special investigation of these other  
11      cases actually apply here, and there are some real  
12      basis ones: There was no written protocol at the lab  
13      that was applied, specifically to the testing; there  
14      was no -- there are a lot of scientific controls that  
15      the ASCLAB expert said needed to be used that were not  
16      routinely used. And the best example of that would be  
17      when you are testing, say, a blood sample, and in this  
18      case from Christmas paper, what you're supposed to do  
19      is to take a sample of what you believe is an unstained  
20      part of the Christmas paper or the object upon which  
21      the evidence was found, and test it to make sure that  
22      you are not getting any readings from that. And what  
23      you are hoping for there is a negative result. It's  
24      just a part of the scientific method. You want some

1 negative results that you know are going to be  
2 negative, and some positives. That wasn't done here.

3 So, several of the criticisms that  
4 the special investigation came up with do, in fact,  
5 apply to the John Moss case, and Doctor Bing has  
6 established that. And that is really not disputed by  
7 anybody. It's not disputed by Ted Smith. It's a  
8 matter that really can't be disputed, based upon the  
9 designation, because they weren't doing things like  
10 that back then.

11 The remainder of Doctor Bing's  
12 opinion in analyzing the testimony and testing of Fred  
13 Zain in this case really has to do with the application  
14 of forensic principles, wherein you have a situation  
15 where evidence is found at a crime scene, and Doctor  
16 Bing, both in his extensive Affidavit, that is in the  
17 record, and in his deposition, when he was asked  
18 questions both by me and by the Prosecutor's office,  
19 went into great detail about a number of accepted  
20 forensic principles that you apply when you are  
21 interpreting data obtained from a crime scene.

22 What he ultimately concluded, when  
23 -- the ultimate conclusion that Doctor Bing reached,  
24 when you put all of the pieces together, was that the



1 data generated in this case was meaningless, and that  
2 includes both -- I know it's in his deposition, and I  
3 think it's also in his Affidavit. And Doctor Bing is  
4 an eminently qualified national expert from Boston, who  
5 has testified as an expert in this case and many others  
6 about DNA and other forensic areas. And the lab he  
7 worked at was affiliated with the Harvard Medical  
8 School, and he has a lot of experience, both  
9 forensically, doing DNA testing, and medically, doing  
10 DNA testing.

11 When the Court re-opened the  
12 discovery to allow the State to have their own expert,  
13 and we can introduce the deposition of Ted Smith, who  
14 is the current head of the lab here in West Virginia, I  
15 think largely he did not disagree with Doctor Bing.  
16 And more importantly, Ted Smith testified that he  
17 couldn't vouch for the accuracy of anything that Fred  
18 Zain did, and that in fact he felt that based upon the  
19 Supreme Court decision that he couldn't do that, and  
20 that he could never vouch for -- to the extent that we  
21 could prove that the testing was done by Fred Zain, he  
22 could never vouch for the accuracy. So, you have a  
23 situation where the State's own expert can't talk about  
24 the reliability or accuracy of the data that was

1 generated.

2 I think when you read the  
3 deposition of Robert Murphy and Doctor Bing, and you  
4 look at the lab notes, I think the record pretty  
5 clearly demonstrates that it was Fred Zain who  
6 performed the serological testing on what I call the  
7 critical pieces of evidence, which would be the blood  
8 on the Christmas wrapping paper, on the door knob, and  
9 I think there was a flash light, and I may be getting  
10 that confused. But the ones that Zain at trial  
11 testified, where he did multiple typings, and he  
12 concluded that some of the typings could not have been  
13 deposited by the other people in the house, and that  
14 they matched John Moss's type.

15 But I think we've been able to  
16 establish, without much contradiction, and the one  
17 sheet, in particular, he did find Fred Zain's initials,  
18 FSZ. And that was what Mr. Murphy testified that would  
19 tend to indicate that Fred Zain was the one who did  
20 that, but Mr. Murphy couldn't really recall, in fact,  
21 who did what. And it was pretty clear that Mr. Murphy  
22 had done the serological testing on what I call the  
23 control blood samples, which would be the blood samples  
24 of the Reggett family, because he needed to identify

1       their various types to make sure that the blood on the  
2       wrapping paper could not possibly have been deposited  
3       by them.

4                       So, I think that we're pretty much  
5       not in dispute scientifically up to that point. I  
6       think the area where Captain Smith was disagreeing with  
7       Doctor Bing had to do with some of the assumptions.  
8       Can we assume, for example, that the blood on the  
9       wrapping paper was deposited by one person, as opposed  
10      to potentially being a mixture. And he did testify  
11      that while the blood was smeared on the wrapping paper,  
12      that would at least create an argument that it possibly  
13      was a mixture, in which case the analysis that Doctor  
14      Bing made was essentially that we don't have an eye  
15      witness who is alive as to how this blood got  
16      deposited, so what you have to do is to say, Well,  
17      let's see, who are the potential donors in the house?  
18      So you look at the types of the four members of the  
19      Reggett family, and when you compare the types that  
20      were found, for the vast majority of the types that  
21      were found, one or more members of the Reggett family  
22      could have been donors or depositors of the blood on  
23      these critical pieces of evidence.

24                      And what Doctor Bing said is that

1 by not analyzing it appropriately, it gave an  
2 exaggerated probability statistic when Fred Zain  
3 testified as to the ultimate results of the testing,  
4 whereas the testing and the testimony should have  
5 focused on those types -- and I believe there are  
6 three, at least there were three different types --  
7 that could not have been deposited by anybody in the  
8 Reggett family, where the probabilities would have  
9 been substantially lower. And it was in that area that  
10 Captain Smith had the biggest disagreement with Doctor  
11 Bing.

12 I don't know how to characterize  
13 the dispute. Obviously, experts can disagree. Maybe  
14 some experts are more conservative than others. It may  
15 be in the nature of that kind of disagreement. It may  
16 be the kind of thing that scientists are free to argue  
17 about. But I think in light of the history that  
18 ultimately was and has been demonstrated when Fred Zain  
19 was investigated, a conservative approach certainly  
20 makes a lot more sense than one where you kind of --  
21 where you're kind of accepting of the data, you're kind  
22 of saying, Yeah, I'm going to accept what I see here on  
23 the paper that Fred Zain wrote down; I'm going to  
24 accept that as being true and accurate.

1                   And I know that in the reply brief  
2           I pointed out that the Respondent, in his brief, has  
3           asked this Court to actually make a finding that what  
4           Fred Zain did in this case was correct and reliable.  
5           And even though I think it is critical as to the second  
6           issue for the Court to make a finding one way or the  
7           other, I think the Court is in the position in  
8           resolving the second issue --

9                   THE COURT:       Well, let me ask you about  
10          this issue. Was this raised on appeal?

11                  MR. SIMMONS:    This issue was not raised on  
12          appeal. It was not.

13                  THE COURT:       What effect does that have on  
14          this issue?

15                  MR. SIMMONS:    Well, it has the effect of not  
16          having been addressed by the Supreme Court previously;  
17          okay, it has that effect.

18                               It has the effect of putting the  
19          burden on me to prove it as a factual matter in the  
20          Habeas. And it would probably depend on what label you  
21          would put it under. Obviously, the Supreme Court  
22          historically, for many years, was affirming convictions  
23          and not accepting appeals in cases where Fred Zain's  
24          testing and testimony was involved, and they were

1 accepting those results. And it wasn't until the  
2 special investigation was completed that the Supreme  
3 Court even had the benefit of knowing what the State  
4 lab was doing at that time.

5 So, if you --

6 THE COURT: So, you're saying that it's  
7 your position, under these unique circumstances, that  
8 it's not waived?

9 MR. SIMMONS: Right. I don't think it's  
10 waived. But in part, because it is a kind of newly  
11 discovered evidence, because I don't think that anybody  
12 knew. I think if we'd known about it earlier, we  
13 wouldn't have let him testify, you know, and the judges  
14 wouldn't have let him testify, and the prosecutors  
15 wouldn't have let him testify. So, once we got all of  
16 that evidence compiled, and everybody was on notice, I  
17 think that is what led us to say, Well, let's examine  
18 what he did.

19 And I also think that even without  
20 that, in a Habeas, if you raise an issue that wasn't  
21 raised in the appeal, which is often the case, and I'm  
22 treating this as a constitutional violation, the fact  
23 that it wasn't raised in the appeal, in my view,  
24 doesn't cause any waiver issue. I think there may be a

1       stricter standard in the federal system than there is  
2       in the state system. But --

3               THE COURT:       Let me ask you another  
4       question about the -- Judge MacQueen, when he reviewed  
5       this matter, was of the opinion that there was more  
6       than sufficient evidence, assuming that the Zain  
7       testimony was, in fact, false. How is that different  
8       than what you are raising today?

9               MR. SIMMONS:   Well, I think what is  
10       different, and what I tried to explain in the briefs on  
11       these last two issues, under the last opinion, the  
12       Court has to assume it was false. Okay, under this  
13       issue, I have to prove that it was false; so that's one  
14       distinction.

15                               As I noted --

16               THE COURT:       What is the practical effect  
17       though?

18               MR. SIMMONS:   I think I tried to get to  
19       that. What the lab decision ended up saying was, and  
20       we can assume that it was false -- what the laboratory  
21       decision said was anytime false evidence or false  
22       testimony is presented, it's a non-constitutional  
23       error; therefore, the harmless error standard for non-  
24       prosecutorial errors applied. And that is why the

1 Court came up with that type of three prong test. You  
2 look at it, was there other evidence, and if that is  
3 yes, then you go to number two, well, was he  
4 prejudiced? It's a two-part test.

5 In my view, the Supreme Court erred  
6 in saying that that was a non-constitutional error. I  
7 think the decision by the U.S. Supreme Court is very  
8 clear that when we have false testimony and false  
9 evidence, that that is a constitutional error, and the  
10 harmless error standard is raised. So, what I've tried  
11 to argue to the Court is that if I can convince you  
12 that the evidence was unscientific, misleading, and  
13 false here, that is a constitutional error, and the  
14 only thing I have to show is the State would have to  
15 show that it is harmless beyond a reasonable doubt -- I  
16 don't have the exact language, but that is quoted in  
17 the brief. That is the essence of what the rule is.

18 It's kind of a technical  
19 distinction, but I think it's a legitimate one.

20 THE COURT: I see where you're coming  
21 from.

22 MR. SIMMONS: Okay. So, I think we have a  
23 record before the Court now that is extremely  
24 supportive of -- this record overlaps a little bit. I



1 think it supports the first issue, but it also supports  
2 the second issue. I think we have pretty solid  
3 evidence that what Fred Zain did in this case was  
4 false, unscientific, and misleading, and that there was  
5 exaggerated evidence.

6 We really don't have a strong  
7 dispute on most of the criticisms that Doctor Bing  
8 made, and therefore, on that issue, I would ask the  
9 Court to find in favor of the Petitioner. And if you  
10 apply the constitutional harmless error standards, I  
11 believe the Petitioner has to prevail under that  
12 theory, because of the way that standard is applied.

13 Obviously, just so this is not  
14 confusing the record, we obviously believe that both  
15 standards, the non-constitutional and the  
16 constitutional harmless error standards are met in this  
17 case. But we have already argued and briefed that  
18 first one, so I won't talk about that one.

19 So, the final issue of the three  
20 issues raised is simply the one having to do with the  
21 confession. And this is one of the things that makes  
22 this case unique. I've not seen it. I've done a lot  
23 of research trying to find it; I've not seen a case  
24 like this, and I'm sure they exist somewhere and I just

1 haven't found them yet, where you have two different  
2 people at two different times confessing to the same  
3 crime. And it is a very, very unusual circumstance.

4 And to me, that confession issue  
5 definitely influences the other two more scientific  
6 issues that have already been argued and discussed  
7 before the Court, because when you go through any  
8 analysis and you're trying to say, Okay, well, what was  
9 the evidence? Was there enough evidence for a jury to  
10 convict this person? That is a big problem for the  
11 State, when you have a completely different person who  
12 testified in this trial, who confessed to the same  
13 crime. And so, to me, that created an extra burden for  
14 the State, when you do the Habeas analysis, to overcome  
15 that confessional issue.

16 I also think that the confession  
17 issue, which was obviously raised on appeal, and we're  
18 certainly allowed to raise it again in a Habeas, is  
19 influenced by this Court's resolution of what I'm going  
20 to call the scientific issues. The whole case has to  
21 be looked at as a whole, and that is why these were the  
22 issues raised in the Habeas.

23 Some of the previous Orders, not by  
24 you, but by your predecessor, seem to indicate, well,

1       you know, obviously the confession from Mr. Reggett  
2       was beaten out of him. It's as if there is a  
3       conclusion that that confession was beaten out of him,  
4       and this one, where there was testimony that Mr. Moss,  
5       who was a 17 year old boy at the time, was handcuffed  
6       to the neck wrist, and a State Trooper got in the back  
7       and beat him in the stomach, and the Trooper didn't  
8       deny that he got in the back seat with him. Of course,  
9       he denied hitting him. But it seems to me that if the  
10      Court really took the position that Mr. Reggett's  
11      confession was beaten out of him, and was not knowingly  
12      and intelligently given, despite the specific findings  
13      made by Judge Hey, who was the judge in the Reggett  
14      part of the case, then you would similarly have to  
15      conclude the same here with respect to Mr. Moss.

16                       But I kind of attached those issues  
17      all together. I didn't devote a lot of the briefing to  
18      the confession issues, because there's a lot of stuff  
19      in the record already with respect to that. I just  
20      wanted it to be placed in the context of what was done  
21      here, and so in light of these issues, I would  
22      respectfully ask the Court to grant the Habeas.

23                   THE COURT:        Alright. Thank you very much,  
24      Mr. Simmons.

1 Ms. Kershner ...

2 MS. KERSHNER: Your Honor, I think it's  
3 really important for the Court to be aware of a little  
4 bit of background. Again, as Mr. Simmons said, I think  
5 most of it is probably already before the Court and has  
6 already been reviewed.

7 But at the time this case arose,  
8 which was in December of 1979, at that time, Mr. Zain  
9 was not the head of the lab at the State Police  
10 Serology lab. He was working under the supervision of  
11 Trooper Murphy, and no questions have been raised about  
12 Trooper Murphy's work, and in fact, the case, what is  
13 commonly called *Zain II*, the second case involving the  
14 investigation of the State Police lab, specifically  
15 found that no other troopers were -- that no other  
16 employees of the State Police lab's work was  
17 questioned, or was under the same scrutiny as Zain.

18 But at that time, Mr. Zain was  
19 working under supervision. So, I think that is an  
20 important element.

21 Second --

22 THE COURT: But Mr. Zain, in fact, did the  
23 testing?

24 MS. KERSHNER: He did do the -- he did

1       probably most of the important testing, but he did it  
2       under supervision.

3                       Second of all, it is a unique case  
4       in that the work done by -- the police already had a  
5       suspect, and in fact, had already arrested him. While  
6       he was in custody, still in jail, the testing was done  
7       and at that point Murphy and Zain are saying to the  
8       arresting officers, There is evidence here that someone  
9       other than the defendant or any of the victims  
10      deposited blood at the scene of the crime. And in  
11      fact, they came under a great deal of pressure because  
12      of that result.

13                   THE COURT:       Say that again?

14                   MS. KERSHNER: They came under a great deal  
15      of pressure because they got a result that obviously  
16      the arresting officers didn't want them to get.

17                               But in fact, that helped clear Mr.  
18      Reggett, and had the police looking for another  
19      suspect. And the results of that test -- and it  
20      primarily centered around this one small spot of blood  
21      on Christmas wrapping. And Judge MacQueen already  
22      ruled -- in fact, he already had ruled on the issue as  
23      it relates to Doctor Bing's review of the evidence, in  
24      his Order of September 10th of 1998. He dealt with

1 Doctor Bing's testimony, Doctor Bing's deposition, and  
2 still found that Doctor Bing's evidence was not  
3 sufficient to create a new constitutional issue.

4 Since that time, the only  
5 additional evidence that there is, since Judge  
6 MacQueen's Order was entered, the only additional  
7 evidence there is, is the Ted Smith deposition, and Ted  
8 did disagree with Doctor Bing on some fairly key  
9 points. He certainly doesn't strengthen Doctor Bing's  
10 testimony or raise any new issues that would create  
11 doubt as to the results of the testing.

12 So, we've got Judge MacQueen's  
13 ruling, and some additional evidence that tends to  
14 support Judge MacQueen's ruling. There just isn't any  
15 more issue here on that point.

16 THE COURT: But Mr. Simmons suggests that  
17 you are asking the Court to make a finding that the  
18 testing isn't correct, that the evidence isn't correct.

19 MS. KERSHNER: Make a finding that he has not  
20 met his burden of showing that it was incorrect, which  
21 is a little bit different, but that he has not met his  
22 burden.

23 With regard to the confession, I'll  
24 just say -- or the two confessions that were ruled

1       admissible, there may have -- since *Miranda's*  
2       confession, there may not have been a confession more  
3       reviewed than these confessions. They were reviewed as  
4       part of a transfer hearing, as part of a trial, as part  
5       of a -- two different Supreme Court cases, and another  
6       trial, and they have withstood the review of several  
7       different courts.

8               THE COURT:       Mr. Simmons suggests to me,  
9       however, that you have to look at them in the totality  
10      of the circumstances, and suggestion is that you have  
11      to question the validity of them, in light of the  
12      testing.

13             MS. KERSHNER:   Well, your Honor, obviously  
14      that's not the only thing the conviction was standing  
15      on. But when you look at the confessions themselves,  
16      there are indicia of reliability within those  
17      confessions that have nothing to do with the testing.  
18      So, the one that springs to my mind most readily is Mr.  
19      Moss indicating that there had been -- well, there had  
20      been Christmas presents taken from the scene of the  
21      crime in December, and Mr. Moss indicating that he had  
22      given one of the gifts he had taken to a friend's  
23      mother, I believe it was. And that woman confirming  
24      that she had gotten a gift that matched the description

1 of one of the stolen presents.

2 There are lots of indicia of  
3 reliability within the confession that had nothing to  
4 do with Zain's work or anything else. So, I don't  
5 think that there is a basis for finding that those  
6 confessions were in any way tainted by Fred Zain.

7 And again, this is kind of a unique  
8 case, in that we are dealing with a suspect whose guilt  
9 was supported by Zain's work. We are dealing, first of  
10 all, with a suspect who was cleared by Zain's work.  
11 And then that same -- those same testing results later  
12 implicated another person. So, it's really, as Judge  
13 MacQueen said at more than one point during this case,  
14 it's a lot different than your typical Zain case.

15 So, I think that --

16 THE COURT: You're suggestion there is  
17 that they didn't come up with the results the State  
18 Police wanted?

19 MS. KERSHNER: Right; where typically, I  
20 don't know of a case that was reviewed as part of the  
21 investigation of the State Police lab, where questions  
22 were raised about -- that would indicate that the  
23 guilty were set free as a result of Zain's work.  
24 Rather, there were questions raised that the innocent



1       may have been convicted. This is just a very different  
2       kind of situation than we would expect if Zain were  
3       going to falsify work, or do sloppy work, incomplete  
4       work, this is not the results we would expect to get.

5               THE COURT:       Mr. Simmons, is there anything  
6       further you would like to add?

7               MR. SIMMONS:    I'd just like to respond to a  
8       couple of points there. It seems that the State's main  
9       argument to the response to the scientific criticism is  
10      largely due to the testimony, I think, of Mr. Murphy,  
11      the idea that some of the officers involved in the case  
12      didn't like it when some of the test results came out  
13      that did not implicate Mr. Reggett, and therefore, put  
14      pressure on them. But Mr. Murphy also noted, when he  
15      was deposed, and that's in the record, is that when  
16      they did come up with results that Fred Zain said that  
17      it could not have been Mr. Reggett, the detectives  
18      suggested that maybe someone planted the blood there.

19               So, I don't know that the kind of  
20      speculation and back room discussions that may have  
21      been had in this case would necessarily be what this  
22      Court bases a decision on, on the scientific  
23      reliability and the testing. I would trust that that  
24      would be based upon the actual testimony of Doctor Bing

1 and which Ted Smith testified to, which did not agree  
2 with Doctor Bing.

3 On the reference to some findings  
4 made in an Order that Judge MacQueen made earlier with  
5 respect to Doctor Bing, it is clear in the record that  
6 a motion was filed noting specific places in the  
7 deposition and in the record that we contended were  
8 erroneously noted in the Order by Judge MacQueen. That  
9 has been filed and supplemented, and it is all in the  
10 record, and ultimately, that motion was not granted.

11 But I guess the point I'm trying to  
12 make is even though there may be findings by Judge  
13 MacQueen in his Orders that are contrary to what Doctor  
14 Bing testified to, as the Petitioner, we have at least  
15 made an effort to correct those findings, by citing to  
16 the record, and citing Doctor Bing's testimony, and  
17 that is not refuted by anybody. But the record stands  
18 as it stands.

19 I agree that this confession  
20 probably has been analyzed a lot, but it has never been  
21 analyzed subsequent to the special investigation and  
22 all of the findings made with respect to Fred Zain and  
23 his history of testifying falsely and making up data.

24 Here, you have a case where John

1 was 17 years old, and I don't know how old he would  
2 have been when he was convicted the first time and the  
3 second time, but it's a life without mercy case. And  
4 we have this case that is just tainted throughout by  
5 Fred Zain, and somehow the Court system, I would  
6 submit, just needs to deal with that. We need to  
7 remove what I think is the stain and the questions that  
8 are on this case because of Fred Zain's involvement,  
9 and this Habeas action is really the only effective  
10 relief that Mr. Moss has.

11 And again, I would respectfully ask  
12 the Court to grant the Habeas.

13 THE COURT: Alright; thank you very much.  
14 The argument was well done, and very helpful to the  
15 Court. We'll get an Order accomplished in this matter.

16 Thank you all very much.

17 MR. SIMMONS: Thank you, Judge.

18  
19 WHEREUPON, the proceedings were concluded.  
20  
21  
22  
23  
24

1 STATE OF WEST VIRGINIA,  
2 COUNTY OF KANAWHA, to-wit:  
3

4 I, Connie L. Cooke, Official Reporter for the  
5 Circuit Court of Kanawha County, do hereby certify that  
6 the foregoing is a true and correct transcript of the  
7 proceedings had and reported by me and transcribed into  
8 the English language.

9 Given under my hand this 18th day of  
10 February, 2003.  
11  
12  
13

14 Connie L. Cooke  
15

16 Official Reporter  
17  
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**MOSS v. BALLARD**  
**CASE NO. 2:09cv01406**

**RESPONDENT'S EXHIBIT 29**

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY

90 APR 23 PM 12:07

WEST VIRGINIA

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

FELONY NO. CR-AP-82-F-122

JOHN R. MOSS, III,

Defendant.

BEFORE: HONORABLE HERMAN G. CANADY, JR., Judge,

APPEARANCES:

FOR THE STATE: Neva Lusk, Esquire, Assistant  
Prosecuting Attorney, Kanawha County, West Virginia.

FOR THE DEFENDANT: The defendant in person, and by  
Nelson Bickley and Kathy Beckett, Esquires, Attorneys at  
Law.

Margaret I. Williams, CSR  
Official Reporter

3/3/89

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[ ]  
1 (BE IT REMEMBERED, that heretofore on the 3rd day  
2 of March, 1989, upon Felony No. CR-AP-82-F-221, the  
3 following transpired:)

4 THE COURT: CR-AP-82-F-221, State of West Virginia  
5 versus John Moss. Ms. Lusk, Mr. Revercomb, or at least  
6 Ms. Lusk, for the State of West Virginia. Mr. Nelson  
7 Bickley, Mr. David Lambert for the defense. Conference  
8 to set trial date. Do I have a motion here, Mr. Lambert?

9 MR. LAMBERT: Yes, Your Honor. I filed a motion to  
10 withdraw based upon my change of employment in the  
11 practice of private law.

12 THE COURT: All right. Where are you going?

13 MR. LAMBERT: I'm going with the State. I will be  
14 special assistant attorney general and assigned  
15 primarily to Public Employees Insurance Agency.

16 THE COURT: I guess that disqualifies you. Mr.  
17 Bickley, I guess we can go ahead and set a trial date  
18 with you here. Would you prefer the Court Administrator  
19 appoint another lawyer to assist you in this matter?

20 MR. BICKLEY: Yes, I would prefer it, Your Honor.  
21 But I'd like to advise the Court that I would not be  
22 able to, and I have so advised my client, Mr. Moss, to  
23 go to trial at least until the fall because of prior  
24 criminal commitment cases that I currently have at the

1 particular time, i.e. two murder cases and one rape.  
2 But - - and I think even - - it will take me that long  
3 considering the other cases I have in my practice and to  
4 study the transcript on the legal nuances of the  
5 particular trial to become familiar with it. So I'm not  
6 asking to be relieved. I'm just saying that if a speedy  
7 trial is the issue, then I have a problem.

8 THE COURT: Well, Mr. Moss is in custody. It's a  
9 ways off.

10 John Moss, you have a constitutional right to have  
11 a speedy trial and to have your case heard under the  
12 laws of the State of West Virginia rapidly. Mr.  
13 Bickley, your lawyer, indicates that he can't possibly  
14 get this case ready for trial before some time in the  
15 fall. Do you agree or disagree with your lawyer in that  
16 regard?

17 THE DEFENDANT: I agree with him.

18 THE COURT: All right. For good cause shown and  
19 without objection thereof, I'm going to at least  
20 continue this matter until the rise of the May Term,  
21 1989.

22 Mr. Thaxton, just give me a trial date some time  
23 later in that May Term.

24 MR. THAXTON: July 31st, Judge, or August 7, or



1 August 14.

2 THE COURT: Well, let's just - - when is your  
3 vacation going to be, Mr. Bickley? Can we tentatively  
4 set it down on August 14th, and then we'll just adjourn  
5 from there until - -

6 MR. BICKLEY: Your Honor, I will be on vacation  
7 August 14th hopefully. Small week.

8 THE COURT: What about July 31st? Will you be in  
9 town?

10 MR. BICKLEY: Same week, Your Honor. July 29th I  
11 leave for Sunset Beach.

12 MR. THAXTON: July 28th, Judge, or Tuesday,  
13 September the 5th.

14 MR. BICKLEY: September 5th?

15 THE COURT: Tuesday, September 5th. Then we'll set  
16 it down tentatively for a trial date at 9:30. We'll  
17 call this case at 9:30, September 5, 1989, hoping that  
18 you are thinking of Mr. Moss while you're there on  
19 Sunset Beach, Mr. Bickley.

20 MR. BICKLEY: Oh, I'll probably take transcripts  
21 down, Your Honor.

22 THE COURT: At any rate, let's have the Court  
23 Administrator designate another lawyer to associate with  
24 Mr. Bickley on that matter.

1 MR. SLACK: Mr. Richard Lindsay, Your Honor? If  
2 you will give us one moment, Your Honor.

3 (WHEREUPON, following a brief recess, the following  
4 transpired.)

5 THE COURT: All right, to return to our case, State  
6 of West Virginia versus John Moss, CR-AP-82-F-221. Ms.  
7 Lusk, Mr. Bickley, John Moss being still present with  
8 counsel. Mr. Bickley has indicated that he prefers to  
9 have counsel associated with him on this case. The  
10 Court Administrator directed another name of another  
11 appointee; is that correct?

12 MR. SLACK: Kathy Beckett who is with the  
13 Department of - -

14 THE COURT: All right. That's - -

15 MR. SLACK: That's Beckett, Your Honor.  
16 B-E-C-K-E-T-T.

17 THE COURT: Let me set up pretrial motion schedules  
18 while we're here. Some of that may have been  
19 already resolved in the first trial in this matter.  
20 Nevertheless, there may be additional pretrial motions.  
21 See if you can file your pretrial motions, Mr. Bickley,  
22 by August 15, 1989, and the State respond by August  
23 22nd, 1989.

24 MS. LUSK: Your Honor, the State probably would

1 anticipate filing a motion for discovery itself.

2 Perhaps we can set the deadline for Mr. Bickley to  
3 answer that too.

4 MR. BICKLEY: August the what, the State respond,  
5 Your Honor?

6 THE COURT: August 22nd. The State is anticipating  
7 filing some discovery that will be by way of  
8 interrogatories, or do you know?

9 MS. LUSK: I'm not sure yet, Your Honor. I'm not  
10 sure.

11 THE COURT: Let's set then, August 1st as the  
12 deadline to complete all that discovery anticipated  
13 by the State so that - -

14 MS. LUSK: Judge, generally, our right to ask for  
15 reciprocal discovery isn't triggered until we have fully  
16 complied and answered Mr. Bickley's motions for  
17 discovery. So perhaps - - maybe I can suggest that Mr.  
18 Bickley file his motions by the 1st and we can respond  
19 by the 15 which would trigger our right to ask for  
20 discovery and he can respond to mine by the 22nd. Use  
21 the same date but in a different order. Is that all  
22 right?

23 THE COURT: All right. So ordered. Cut an order to  
24 that effect. Is there anything else to take up this

1 morning?

2 MR. BICKLEY: I have nothing further, Your Honor.

3 THE COURT: All right, I'll remand John Moss back  
4 into the custody of the sheriff.

5 (WHEREUPON, the hearing concluded.)

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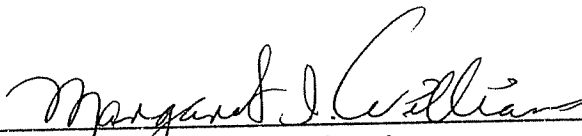
STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, Margaret I. Williams, Official Reporter of the Circuit Court of Kanawha County, West Virginia, do hereby certify that the foregoing is a true and accurate transcript of the proceedings had in the matter of State of West Virginia versus John R. Moss, CR-AP-82-F-221, held on March 3, 1989, as reported by me in stenotype characters and transcribed into the English language.

I further certify that the transcript within meets the requirements of the Code of the State of West Virginia, 51-7-4, and all rules pertaining thereto as promulgated by the Supreme Court of Appeals.

Given under my hand this 23rd of April,  
1990.

  
Margaret I. Williams

IN THE CIRCUIT COURT OF KANAWHA COUNTY

WEST VIRGINIA

FILED

90 APR 23 PM 12:07

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

FELONY NO. CR-AP-82-F-122

JOHN R. MOSS, III,

Defendant.

BEFORE: HONORABLE

9/5/89

JADY, JR., Judge,

FOR THE STATE: Ne  
Esquires, Assistant Pro  
County, West Virginia.

teve Revercomb,  
rneys, Kanawha

FOR THE DEFENDANT: The defendant in person, and by  
Nelson Bickley and Kathy Beckett, Esquires, Attorneys at  
Law.

Margaret I. Williams, CSR  
Official Reporter

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1 (BE IT REMEMBERED, that heretofore on the 5th day  
2 of September, 1989, upon Felony No. 82-F-221, the  
3 following transpired:)

4 THE COURT: State of West Virginia versus John R.  
5 Moss, III. Ms. Lusk, Mr. Revercomb, Mr. Bickley. The  
6 matter is set today for - - I thought we had a trial  
7 date on over in September. Is that not correct?

8 MR. BICKLEY: There is one set for September I  
9 believe, Your Honor. But - -

10 MR. REVERCOMB: It was set for today, Your Honor,  
11 September 5th.

12 MR. BICKLEY: It was set for today.

13 THE COURT: I thought it was on over in September.  
14 Both parties ready to proceed to trial?

15 MR. BICKLEY: Your Honor, no. The defendant - -  
16 the defense is not ready and prior to that, Your Honor,  
17 a motion is being - - I would like to offer a motion  
18 which Mr. Moss and I are in full concurrence, is that  
19 myself and Ms. Beckett be relieved as his attorney. Now  
20 I think that's a justifiable motion, Your Honor,  
21 considering my schedule. And I understand Mr. Moss'  
22 qualms. I have not even read all the transcripts. I  
23 just found out this morning it was four thousand and  
24 some pages of just voir dire. I read the voir dire, but

1 I don't know the number of pages. But just to give you  
2 some idea of the amount of work that's involved. At the  
3 present time I have for the upcoming months of October  
4 and November, two murder trials, one sexual assault and  
5 the major case, the Walker case, in December, scheduled  
6 for December the 4th.

7 Mr. Moss has questioned the fact that I have not  
8 been able to see him on a regular basis or even  
9 intermittently as I should have or normally have. I  
10 have not been able to read the entire transcript even at  
11 this date, and I have been diligently trying to do so.  
12 But my work load right now is so tremendous and I think  
13 Mr. Moss deserves one who can devote more time to his  
14 case. Mr. Moss joins me with this motion, don't you,  
15 Mr. Moss?

16 THE DEFENDANT: Yes, I do.

17 MR. BICKLEY: He joins with me with this motion.  
18 If fact, he feels so serious about it, if the Court  
19 denies this, he wants to go to Supreme Court to get  
20 relief, and I think that Mr. Moss, considering the  
21 seriousness of his crime that's alleged against him,  
22 that he should have someone he can have complete  
23 confidence in.

24 THE COURT: Who's on the case with you?



1 MR. BICKLEY: Ms. Beckett, Your Honor.

2 THE COURT: Well, I received at least two pieces of  
3 correspondence from Mr. Moss and I relayed those on to  
4 you. You were appointed to this case last - -

5 MR. BICKLEY: February.

6 THE COURT: - - February, and assumed the  
7 responsibility of getting the case ready for trial this  
8 fall. If I were to appoint another lawyer to this case,  
9 he couldn't get it ready before next February. And in  
10 that regard, I think that, you know, the ends of justice  
11 and John Moss' right to a speedy trial would be  
12 frustrated. I believe that you and Ms. Beckett ought to  
13 be able to bring this case to trial some time this fall.  
14 And you assumed that responsibility. When were the  
15 transcripts prepared and read?

16 MR. BICKLEY: Well, the transcripts have been  
17 prepared I guess some time ago, Your Honor. That  
18 came back on appeal.

19 THE COURT: The transcripts went up on appeal - -

20 MR. BICKLEY: On appeal, yes, sir. That's not the  
21 matter. The matter is that I have, you know, there's a  
22 difference between - - I have a tremendous case work  
23 load now. As I have said, there are - - Robert Adams  
24 trial, which will be going to trial because there's no

1 plea bargaining being offered. Larry James, two sexual  
2 - - first degree sexual assaults. That will go to  
3 trial. Larry James. Workman has been settled. Those  
4 two - - both Pennington first degree sexual assaults  
5 probably will go to trial. Now these are pretty much  
6 cases that plea bargaining has either been forthcoming  
7 or not much of a bargain being offered. All of those  
8 cases are sandwiched in between the Moss case. That's  
9 not the main problem. The Moss case entails about  
10 fifteen volumes of voluminous - - how many transcripts?  
11 Do you know?

12 MR. REVERCOMB: Eighteen.

13 MR. BICKLEY: Eighteen volumes of transcripts that  
14 I have to digest and make some sense of. It's three  
15 volumes just of voir dire. And as I'm trying to explain  
16 to Mr. Moss, that I cannot be discussing the case  
17 because I don't know what I'm discussing until I read  
18 the transcript and understand the nature of what  
19 happened at the trial, what our defense is going to be,  
20 et cetera. Meanwhile, I have to make a living.

21 THE COURT: I understand. But someone's got to do  
22 it and - -

23 MR. BICKLEY: But - - yes, sir.

24 THE COURT: - - it's going to result in

1 considerable delay for Mr. Moss.

2 MR. BICKLEY: I was just informed, Your Honor,  
3 that he was over there three years before he went to  
4 trial. That was with Mr. McKittrick. So he had all the  
5 time to work it up, and he was retained. Now I will do  
6 an outstanding job for him when we go to trial. But we  
7 have to have some understanding that there's a mass  
8 amount of trial work that went on that I have to digest  
9 and comprehend and then come up with a defense. And Mr.  
10 Moss' confidence in me is - - there is no confidence  
11 because of what has not transpired in his mind, and all  
12 I am saying is that whoever gets it is going to have -  
13 whether I do it or whomever - is going to have to read  
14 these transcripts before they can do anything as far as  
15 a trial, and that's an awful lot of work to do if the  
16 person is doing something else.

17 THE COURT: John R. Moss, do you understand that  
18 the case that was tried in this Court and later reversed  
19 by the Supreme Court of this State is a particularly  
20 complicated case?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: And whomever takes over that case and  
23 gets it ready for trial must spend a great deal of time  
24 and it's not going to be an easy case for someone else

1 to stand in the shoes of your first lawyer, Mr.  
2 McKittrick?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: And you have written a couple of  
5 letters, and I have relayed those on to your attorney,  
6 expressing your concern about the fact that your case  
7 hasn't moved as rapidly as you had hoped and would like  
8 to see it move. Do you recall those two pieces of  
9 correspondence that you wrote?

10 THE DEFENDANT: Yes.

11 THE COURT: Now do you understand that if you  
12 continually ask -- become dissatisfied and  
13 ask for new counsel and ask that your counsel be  
14 relieved, then your case will remain in limbo  
15 indefinitely? In other words, you're going to have to  
16 show some patience with your attorneys and expect that  
17 it's going to take some time to read all these  
18 transcripts and understand the case and to bring it to  
19 trial. Do you understand that, sir?

20 THE DEFENDANT: Yes, I do.

21 Last February when I was over here in Court, I was  
22 of the understanding that I would be, you know, they  
23 would be ready around August, which is today. And  
24 within that time he has done nothing to show me anything

[ ]  
[ ]  
1 whether he, you know, whether he's interested in the  
2 case or not. Neither has his assistant. I have talked  
3 to his assistant on several occasions and she said that  
4 she had constantly tried to get in touch with Mr.  
5 Bickley in coming over here to get with me on my case.  
6 But, you know, I never seen him. Once he met with any  
7 concern of my case.

8 THE COURT: Well, any lawyer that I appoint here is  
9 going to be a busy lawyer and is going to have  
10 difficulty earning a living. I'm going to decline to  
11 grant the joint motions of both the defendant and his  
12 counsel just forthwith, and I'll take it under  
13 advisement. I'm reluctant to entertain such a motion.  
14 The lawyer who takes on the responsibility of becoming a  
15 lawyer in a serious case assumes that responsibility  
16 and must get the case ready for trial. If the case is  
17 not ready for trial today, give me a trial date later in  
18 this term, Court Administrator.

19 MR. THAXTON: We can go - - what month are you  
20 looking at, Judge? I'm sorry.

21 THE COURT: Either October or November.

22 MR. THAXTON: We can put it on November 27th,  
23 or December 11th.

24 MR. BICKLEY: December 11th would be the best date,

1 Your Honor.

2 THE COURT: All right. Do I take it that you  
3 disagree with the urgings of your lawyer there, Mr. Moss?

4 THE DEFENDANT: Yes, I do. I have here, Your  
5 Honor, a motion I made myself, and I'd like it to be put  
6 in the record.

7 THE COURT: Go ahead and read it in the record.  
8 Is it that long?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you want to hand it to me and - -  
11 have you seen it?

12 MR. BICKLEY: I have not seen it, Your Honor.

13 THE COURT: You'd better view it and inspect it,  
14 Fifth Amendment considerations.

15 MR. BICKLEY: (After reading document.)  
16 Basically, that's the same thing we've discussed, Your  
17 Honor.

18 THE COURT: All right. We'll file John Moss'  
19 motion and make it a part of the record. I've got the  
20 matter under advisement. In the meantime, I'm going to  
21 continue this matter until December 11, 1989, at 9:30.

22 You, Mr. Moss, make what efforts you can to amend  
23 those offenses and assist your counsel in bringing this  
24 matter to trial.

1           Mr. Bickley, peruse those transcripts. The  
2 transcripts of the voir dire other than to get the drift  
3 of what tactics counsel was utilizing, the responses may  
4 not be that material to this case because you will have  
5 a new group of jurors who will have new responses and  
6 new matters of sensitivity that you will be attempting  
7 to detect through that voir dire examination. But at any  
8 rate, let's prepare this case and get it ready for trial  
9 December 11, 1989.

10           Being nothing further, I'll remand John R. Moss  
11 back into the custody of the sheriff.

12           MR. REVERCOMB: Thank you, Judge.

13           MR. BICKLEY: Thank you, Your Honor.

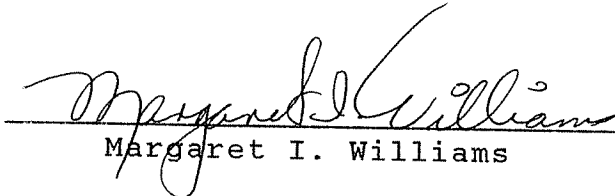
14           (WHEREUPON, the hearing concluded.)  
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STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Margaret I. Williams, Official Reporter of the Circuit Court of Kanawha County, West Virginia, do hereby certify that the foregoing is a true and accurate transcript of the proceedings had in the matter of State of West Virginia versus John R. Moss, CR-AP-82-F-221, held on September 5, 1989, as reported by me in stenotype characters and transcribed into the English language.

I further certify that the transcript within meets the requirements of the Code of the State of West Virginia, 51-7-4, and all rules pertaining thereto as promulgated by the Supreme Court of Appeals.

Given under my hand this 23rd of April,  
1990.

  
Margaret I. Williams



STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Connie L. Cooke, Official Reporter for the Circuit Court of Kanawha County, do hereby certify that the foregoing is a true and correct transcript of the proceedings had and reported in the matter of the State of West Virginia versus John Moss, Jr., aka John Moss, III, upon action number 82-F-221, as stated in the caption hereto, had on the 26th day of April, 1990, during the May 1990 Term of said Court, as reported by me and transcribed into the English language.

I hereby certify that the transcript within meets the requirements of the Code of the State of West Virginia, 51-7-4, and all rules pertaining thereto as promulgated by the Supreme Court of Appeals.

Given under my hand this 13th day of July, 1990.

Connie L. Cooke

Official Reporter